



Dr. C. Reiff Brown has diagnosed claimant's injury as degenerative disk disease and acute herniation with cervical radiculopathy. In spite of the alternative explanations respondent offers, the Administrative Law Judge found that claimant was entitled to temporary total disability benefits and medical treatment as a result of an injury arising out of and in the course of employment. The Appeals Board agrees. The prior injury appears to have been, in large part, a low back injury. Although it also included neck complaints, the evidence here suggests additional injury on October 1, 1998. The subsequent activities appear to have temporarily aggravated claimant's injury. As claimant described it, he does fine as long as he does not do anything. These were occasions when he was doing something and experienced symptoms. From his testimony, it appears that following these activities his symptoms returned to their original state. Finally, while the testimony of Mr. David Sargent suggests claimant grimaced before lifting the piano, it appears on cross examination that he was not certain whether claimant was or was not attempting to lift the piano at the time he heard claimant complain. The Board does agree with respondent that Dr. Brown, who opined that the injury was work related, did not have a full or accurate history. The conclusion here that claimant has suffered an accidental injury is based primarily on claimant's testimony, testimony which the Administrative Law Judge had the opportunity to hear.

Respondent next argues that the evidence does not establish the claimant was temporarily totally disabled for a period of time immediately after the accident. The Board's jurisdiction is limited to a review of allegations that the Administrative Law Judge exceeded his or her jurisdiction. K.S.A. 1998 Supp. 44-551. This includes jurisdictional issues listed in K.S.A. 1998 Supp. 44-534a. Whether claimant is or is not temporarily totally disabled is an issue clearly within the jurisdiction of the Administrative Law Judge. Her decision on that question will, therefore, not be reviewed in an appeal from a preliminary hearing order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller on June 25, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1999.

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BOARD MEMBER

c: Kerry McQueen, Liberal, KS  
Stephen P. Doherty, Kansas City, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director